



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/R0660/C/23/3324485

Holly Farm, Withers Lane, High Legh WA16 0SG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by S Kamani against an enforcement notice issued by Cheshire East Council.
- The notice was issued on 24 May 2023.
- The breach of planning control as alleged in the notice is 'without planning permission, the erection of a brick boundary wall, brick pillars, electric gates, green mesh fencing and four CCTV poles with cameras/lights attached.
- The requirements of the notice are
 - a) Remove the brick boundary wall, brick pillars and electric gates shown in their approximate position marked by an orange line on the attached plan marked "Plan B."
 - Or,**
 - b) Reduce the height of the brick boundary wall, brick pillars and electric gates shown in their approximate position marked by an orange line on the attached plan marked "Plan B" to no higher than 2 metres.
 - c) Remove the green mesh fencing shown in the approximate position marked by a pink line on the attached plan marked "Plan B."
 - Or,**
 - d) Reduce the height of the green mesh fencing shown in the approximate position marked by a pink line on the attached plan marked "Plan B" to no higher than 2 metres.
 - e) Remove the four CCTV poles with cameras/ lights attached shown in their approximate position marked 'A,' 'B,' 'C' or 'D' on the attached plan marked "Plan B."
 - f) Remove from the land all resultant material and debris following compliance with a) or b), c) or d) and e) above.
- The periods for compliance for the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The enforcement notice is quashed.

Preliminary Matter

2. The appeal was originally made on grounds (a), (c), (d), (e), (f) and (g) with grounds (c) (d) (e) and (f) being subsequently withdrawn.

Matters concerning the Notice

3. Irrespective of the grounds of appeal, the Inspector has a duty to ensure that the notice is in order. An enforcement notice must inform the recipient what the breach of planning control is and what must be done to remedy it. The

requirements need to flow from the allegation. The allegation is "the erection of a brick boundary wall, brick pillars, electric gates, green mesh fencing and four CCTV poles with cameras/lights attached." The appellant refers to the notice being confusing and ambiguous with regard to the requirements with "mix and match" options.

4. The requirements need to flow from the allegation. They are:
 - a) Remove the brick boundary wall, brick pillars and electric gates shown in their approximate position marked by an orange line on the attached plan marked "Plan B."
 - Or,**
 - b) Reduce the height of the brick boundary wall, brick pillars and electric gates shown in their approximate position marked by an orange line on the attached plan marked "Plan B" to no higher than two metres.
 - c) Remove the green mesh fencing shown in the approximate position marked by a pink line on the attached plan marked "Plan B."
 - Or,**
 - d) Reduce the height of the green mesh fencing shown in the approximate position marked by a pink line on the attached plan marked "Plan B" to no higher than 2 metres.
 - e) Remove the four CCTV poles with cameras/ lights attached shown in their approximate position marked 'A,' 'B,' 'C' or 'D' on the attached plan marked "Plan B."
 - f) Remove from the land all resultant material and debris following compliance with a) or b), c) or d) and e) above.
5. The requirements break down various elements of the development and provide for reduction as an alternative to removal in the event of the notice being upheld. However, the wording of the requirements lacks clarity and has resulted in different interpretations by the parties as to how those requirements work. In particular, there is no single requirement to remove all of the development. The appellant has interpreted the requirements as consisting of three options namely requirement (a) being the first option, b) and c) being the second option and requirements d) e) and f) being option three. The appellant has referred to those three options to support his arguments under ground (a).
6. The Council disputes that interpretation and maintains that each requirement has to be read in turn and in their own right. Nevertheless, giving words their ordinary meaning, using the word "or" does provides for alternatives options. Whilst the Council considers the appellant's interpretation to be 'over technical,' it is for the Council to set out the requirements in a notice in such a way that an ordinary reader clearly understands what is required.
7. Requirement f) does refer to materials being removed following compliance with a) or b), c) or d) and e) and is therefore a separate requirement. The position with e) is less clear as it could be interpreted as a single requirement or part of option three.
8. Significantly, the Council is of the view that there is no option which allows the boundary wall to remain in its current form which is not the case. The third option which is either requirement d) or d) and e) makes no reference to the reduction or removal of the brick boundary wall, brick pillars and electric gates. Conversely, opting for requirement a) does not require the removal or reduction of the green mesh fencing.

9. The current wording therefore has unforeseen consequences with regard to under-enforcement. Section 173(11) of the Act provides that where an enforcement notice in respect of any breach of planning control could have required buildings or works to be removed or any activity to cease, but does not do so, and all the requirements of the notice have been complied with then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works, or as the case may be the carrying out of the activities. The lack of clarity means that the parts of the development included in the allegation which are not referred to in the chosen option benefit from planning permission upon compliance with that option.
10. The Council has provided examples of appeal decisions where it considers that similar wording has been used without any issue. Both examples provided required fencing to be either removed or reduced in height. The recipients of those notices were given two straightforward options namely to either remove or reduce fencing. In this appeal, the wording provides for three options and none of those options include all of the elements of the development. The examples provided are therefore not comparable to the wording used for this appeal in terms of clarity, the extent of the development or the number of alternatives.
11. I do have wide powers to correct any defect, error or misdescription in the notice under Section 176 (1) of the Act, subject to any corrections or variations not causing injustice to the parties. Not amending the requirements could cause injustice to the Council as the appellant could choose option three and leave the brick boundary wall in place if the notice was upheld. The Council's view is that the wording is clear but that, in any event, the notice could be amended without injustice. Their suggestion is that a) or b) becomes one requirement and c) and d) is a second requirement. However, amending those requirements as suggested would make them more onerous which causes injustice for the appellant.

Conclusion

12. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
13. In these circumstances, the appeal on the grounds set out in section 174(2) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

E Griffin

INSPECTOR